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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE PLATA, JR.,

Defendant and Appellant.

F057999

(Super. Ct. No. F07905215)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Arlan L. Harrell, Judge.

Gordon B. Scott, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Michael A. Canzoneri and Charles A. French, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Levy, Acting P.J., Cornell, J., and Hill, J.

On July 3, 2007, the wife of appellant, Jose Plata, Jr., reported to Fresno police that Plata sent a letter to her at her workplace in violation of a restraining order issued against him. The woman also reported that Plata had abused her over the years, but she had been too scared to report the abuse. The woman showed the officers approximately 20 cigarette burns on her leg that she said had been inflicted by Plata during four to five incidents between the first week of September 2006 and the third week of November 2006. During the first incident, Plata knocked her down, sat on her, and burned her thigh with a lit cigarette. When she screamed, Plata covered her mouth, told her to stop screaming, and burned her other thigh. Plata also beat her unconscious on at least three occasions. The last beating occurred on June 6, 2007, and left her with a constant headache. Plata threatened to kill her if she ever left him.

On July 4, 2007, Plata was arrested. Plata told the arresting officers he had written a letter that he intended to give to the victim in court and claimed that his mother mailed it. Plata admitted threatening to kill his wife, poking her with his finger on her side, and on one occasion hitting her with the back of his hand.

On July 8, 2007, the district attorney filed a complaint charging Plata with two counts of corporal injury to a spouse (counts 1 & 5/Pen. Code, § 273.5, subd. (a)),¹ and one count each of disobeying a domestic relations court order (count 2/§ 273.6, subd. (a)), making criminal threats (count 3/§ 422), and dissuading a witness by force or threat (count 4/§136.1, subd. (c)(1)).

On July 9, 2007, the court issued a second domestic violence protective order against Plata.

On July 23, 2007, Plata pled no contest to one count of domestic violence in exchange for no initial state prison time, a reduction of the charge to a misdemeanor upon

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

successful completion of a batterer's intervention program, and the dismissal of the remaining counts.

On August 20, 2007, the court suspended imposition of sentence and placed Plata on probation for three years on the condition that he serve 365 days in local custody.

On March 3, 2008, Plata was released from custody.

On March 28, 2008, Plata was arrested for violating his probation after police officers found him outside a bar in Clovis in possession of a bottle of vodka.

On April 9, 2008, after Plata admitted violating his probation and waived 420 days credit for local purposes, the court reinstated probation on the condition that he serve an additional 120 days in local custody.

On October 15, 2008, Plata's probation officer conducted a routine probation inspection at Plata's home where he lived with his mother. During a search of the residence, the officer found a beer can in the kitchen trash can. Plata denied the beer can was his and claimed his sister left it there. However, the probation officer contacted Plata's sister and she told him that although she had gone to the house the night before, she did not take any beer to the house or consume any beer there.

On December 12, 2008, Plata admitted violating his probation by consuming alcoholic beverages. The court then reinstated Plata's probation after Plata agreed to waive 636 days of presentence custody credits for all purposes and enroll in a residential treatment program.

On January 13, 2009, the court reinstated probation and ordered Plata to serve 365 days in local custody.

On January 14, 2009, Plata was released from custody and entered into the Fresno Rescue Mission Residential Treatment Program.

On April 27, 2009, the probation department received a fax from the Mission program stating that Plata had been terminated from the program for physical violence, noncompliance with staff, and having an overall uncooperative and bad attitude.

On June 9, 2009, following a hearing, the court found that Plata violated his probation by failing to complete the Mission program and failing to report to the probation department between April 23, 2009 through May 1, 2009. The court then sentenced Plata to the middle term of three years.

On November 13, 2009, appellate counsel filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Plata has not responded to this court's invitation to submit additional briefing.

However, on October 11, 2009, the California Legislature amended section 4019, effective January 25, 2010, to increase the number of presentence days of conduct credit that certain defendants can earn. (Stats. 2009-2010, 3d Ex. Sess. (S.B. 28), § 50, eff. Jan. 25, 2010.) On February 11, 2010, Plata's appellate counsel filed a supplemental brief contending he is entitled to the retroactive application of the amendment to 4019 and the additional credits it provides because denying him these credits would deny him his right to equal protection and conflict with the legislative intent that the amendment apply retroactively in order to reduce California's prison population. We disagree.

The Legislature amended section 4019, effective January 25, 2010, to provide that any person who is not required to register as a sex offender, and is not being committed to prison for, or has not suffered a prior conviction of, a serious felony as defined in section 1192.7 or a violent felony as defined in section 667.5, subdivision (c), may accrue conduct credit at the rate of four days for every four days of presentence custody.

We explained in the recent case of *People v. Rodriguez* (2010) 183 Cal.App.4th 1, however, that the amendment is not presumed to operate retroactively and does not

violate equal protection under law. Plata is, therefore, not entitled to additional conduct credit under the amendment to section 4019.

Further, following independent review of the record, we find that no reasonably arguable factual or legal issues exist.

The judgment is affirmed.